to assess and attempt to collect from your complainant and the Estate in its charge, estate and succession taxes under the provisions of said Massachusetts tax statutes, based upon said domicile or determination of domicile and in an amount in excess of one hundred thousand (100,000) dollars; and that if the said Robert H. Hunt had deceased a non-resident of and not domiciled in Massachusetts the estate and succession taxes under said provisions of Massachusetts tax statutes would be a comparatively nominal amount.

9. Your complainant is informed and believes and therefore alleges that the respondents, Ray L. Riley, comptroller as aforesaid, W. H. H. Gentry, inheritance tax attorney as aforesaid, and Frank P. Sproul, inheritance tax appraiser, as aforesaid, have each severally or as agent one for another, individually or by their agent or agents, determined that the said Robert H. Hunt died domiciled in California and are asserting and have threatened and are about to assess and attempt to collect from your complainant and the Estate in its charge estate, inheritance and succession taxes under the provisions of said California tax statutes, based upon said domicile or determination of domicile and in an amount in excess of one hundred thousand (100,000) dollars; and that if the said Robert H. Hunt had deceased a non-resident of and not domiciled in California the estate, inheritance and succession taxes under said provisions of California tax statutes would be a comparatively nominal amount.

10. That it is impossible in law or fact for the said Robert H. Hunt to have been domiciled at his death in both Massachusetts and California and it should not be possible for estate, inheritance and succession taxes to be so asserted, threatened, assessed and collected by the tax officials or representatives of said two States.

11. Your complainant is informed and believes and therefore alleges that there is little likelihood of any controversy between your complainant executor as aforesaid, on the one hand, and the respondent, Henry F. Long, commissioner as aforesaid, on the other hand, as to the Massachusetts taxes, their computation, assessment and collection, if the question of domicile is finally determined, or of any controversy between your complainant executor as aforesaid, on the

one hand, and the respondents, Riley, Gentry, and Sproul, tax officials as aforesaid, on the other hand, as to the California taxes, their computation, assessment and collection, if the question of domicile is finally determined, but that the main controversy relates to a sum of one hundred thousand (100,000) dollars or more in the custody or possession of your complainant and to your complainant's obligations with respect thereto and under said tax laws, the tax officials of the two States, respondents herein, each claiming adversely to one another said sum or more.

12. That therefore the threatened collection of both the California and Massachusetts taxes, each based upon an inconsistent claim of domicile, will deprive your complainant and the Estate in its charge of property without due process of law and deny it equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States; that the threatened assessment and collection of both of said taxes, each based upon an inconsistent claim of domicile, is causing irreparable injury by interfering with the administration of the estate both in California and Massachusetts, causing extra expense, preventing distribution, compelling your complainant to maintain large cash reserves at low interest rates or at no interest to cover the threatened taxes and costs of litigation.

13. Your complainant has no adequate remedy at law.

14. Your complainant has given bond payable to the clerk of this court in such amount and with such surety as this court has deemed proper conditioned upon compliance by your complainant with the future order or decree of this court with respect to the subject matter of this controversy.

Wherefore your complainant prays:

1. That this court enter a temporary restraining order enjoining the respondents and each of them, their agents and servants, until further order of this court, from taking any action to fix or assess any estate, inheritance or succession tax on transfers caused by the death of said Robert H. Hunt, and from taking any action to collect any estate, inheritance or succession tax from the Estate of Robert H. Hunt, the Security-First National Bank of Los Angeles as admin-

istrator with the will annexed of the Estate of Robert H. Hunt, or your complainant.

2. That this court determine the domicile of said Robert H. Hunt at the date of his death, and then enter a permanent order enjoining those respondents who are the officials of the non-domiciliary state, their agents and servants, from taking any action to collect any estate, inheritance or succession tax based upon any domicile except as so determined.

3. That each of the respondents be required to set forth and plead their several adverse claims to said money and property in the custody and possession of your complainant and to any one or more of the benefits arising by virtue of the complainant's obligation to pay estate, inheritance or succession taxes on account of the death of said Robert H. Hunt.

4. That this court determine the person or persons entitled to said money and property and to any benefit arising by virtue of complainant's said obligation.

5. That this court determine the sum owed to any one or more of the respondents by your complainant.

6. That this court adjudge that your complainant is under no further obligation to any one or more of the respondents upon compliance by your complainant with such decree as this court may make in this case.

7. That your complainant be awarded its costs including a reasonable attorney's fee to be deducted from any amount which may be decreed due to respondents.

8. That this court order such other and further relief as is proper.

WORCESTER COUNTY TRUST COMPANY, [SEAL]
by WILLIAM J. MCKINLEY,
Vice-President and Trust Officer.

COMMONWEALTH OF MASSACHUSETTS.

WORCESTER, ss. February 27, 1936.

Then personally appeared William J. McKinley, to me known to be the vice-president and trust officer of the Worcester County Trust Company, and made oath that the facts contained in the foregoing

petition by him subscribed are true except such as are made on information and belief and as to those that he believes them to be true.

Before me, BRADLEY B. GILMAN,

[SEAL] *Notary Public.*

[PUBLIC—NO. 422—74TH CONGRESS] [S. 1277]

AN ACT To amend section 24 of the Judicial Code by conferring on district courts additional jurisdiction of bills of interpleader, and of bills in the nature of interpleader.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 24 of the Judicial Code, as amended, is amended by inserting at the end thereof the following:

"(26) Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader—Twenty-sixth:—(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified filed by any person, firm, corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of the value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if—

"(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligation; and

"(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem

proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

"(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

"(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

"(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

"(e) In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 274b of the Judicial Code (U. S. C., title 28, sec. 398), any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of the Judicial Code and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant

or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 274b of the Judicial Code."

SEC. 2. The Act entitled "An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader", approved May 8, 1926 (U. S. C., Supp. III, title 28, sec. 41 (26)), is hereby repealed. Said repeal shall not affect any act done or any right, accruing or accrued in any suit or proceeding had or commenced under said Act hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Act had not been repealed hereby.

Approved, January 20, 1936.

On the said twenty-eighth day of February A. D. 1936, the following Bond in the sum of two hundred thousand dollars ($200,000) was filed and approved by the court, the Honorable George C. Sweeney, District Judge, sitting:

BOND.

[Filed and approved February 28, 1936.]

FIDELITY AND DEPOSIT COMPANY OF MARYLAND BALTIMORE

Know all Men by these Presents, That we, Worcester County Trust Company, a banking corporation duly established by law, and having an usual place of business in Worcester, County of Worcester, and Commonwealth of Massachusetts, executor of the will of Robert H. Hunt, as Principal; and the Fidelity and Deposit Company of Maryland, a corporation duly organized under the laws of the State of Maryland, and having an usual place of business in Boston, County of Suffolk, Commonwealth of Massachusetts, as Surety, are holden and stand firmly bound and obliged unto the Clerk of the District Court of the United States for the District of Massachusetts, in the full and just sum of two hundred thousand (200,000) dollars, to be

paid unto the said Clerk of the District Court of the United States for the District of Massachusetts, to which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

In Witness Whereof, the said Principal and the said Surety have caused this bond to be duly executed by their various officers thereunto duly authorized and their corporate seals to be hereunto affixed this twenty-eighth day of February, A. D. 1936.

The Condition of this Obligation is such, That, Whereas, the said Worcester County Trust Company, executor of the will of Robert H. Hunt, complainant, has begun a suit in equity in said District Court of the United States, for the District of Massachusetts, by a complaint in the nature of a bill of interpleader against Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, and Frank P. Sproul, Inheritance Tax Appraiser of the State of California, claimants, in the matter of inheritance taxes to be collected from the estate of Robert H. Hunt.

Now, Therefore, if the said complainant, as Principal, shall comply with the future order or decree of the court with respect to the subject matter of the controversy, then this obligation shall be null and void; otherwise shall remain in full force and virtue.

WORCESTER COUNTY TRUST COMPANY [SEAL]
executor u/w of Robert H. Hunt
By WILLIAM J. MCKINLEY
Vice-President and Trust Officer.

Signed, sealed and delivered in the presence of
MERRILL S. JUNE

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND [SEAL]
By GORDON B. HEBB, *Attorney-in Fact.*

Attest: MARY M. HENCHEY *Resident Assistant Secretary.*

Approved 2-28-36.
GEO. C. SWEENEY, *D. J.*

WORCESTER COUNTY TRUST COMPANY TRUST DEPARTMENT
344 Main Street Worcester, Massachusetts
William J. McKinley Vice President & Trust Officer
Clarence A. Evans Vice President & Asst. Trust Officer
Ralph C. Ordway Assistant Trust Officer

February 28, 1936

I, R. C. Ordway, Secretary of the Trust Committee, hereby certify that the following vote was passed at a meeting held on February 18, 1936:

Robert H. Hunt Estate

Voted: That the Worcester County Trust Company, formerly called the Worcester Bank & Trust Company, as it is Executor u/w of Robert H. Hunt, late of Worcester, Massachusetts, take such legal proceedings in State or Federal Courts, whether at law or in equity, and whether by injunction proceedings, interpleader proceedings, or otherwise, as may be necessary or advisable on advice of counsel to determine the domicile of the decedent in Massachusetts or in California and to determine the liability of the executor or of the estate wherever situated to any and all state inheritance taxes, and that William J. McKinley, Vice President and Trust Officer, or Harry R. McIntosh, Treasurer, be and each is hereby authorized in the name and behalf of the Worcester County Trust Company, as Executor u/w of the said Robert H. Hunt, to execute any complaints, petitions, motions, or other instruments, necessary or advisable in said proceedings and to take such other action as may be necessary or advisable in connection therewith.

A true copy.
Attest: R. C. ORDWAY, *Secretary of Trust Committee* [SEAL]

On the same day, the following Restraining Order and Order of Notice was issued:

RESTRAINING ORDER AND ORDER OF NOTICE.

February 28, 1936.

SWEENEY, J. Upon the filing of the bill of complaint in the nature of a bill of interpleader, duly verified, praying among other things for the determination of the domicile of Robert H. Hunt, of whose estate the complainant has been appointed executor, and the liability of said estate and said executor to state taxation, and it appearing that there is danger of irreparable injury from delay to the complainant, it is

Ordered that the respondents, Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, Ray L. Riley, Comptroller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California and each of them, their agents and servants, be, and they are hereby, temporarily restrained until further order of this court, from taking any action to fix or assess any estate, inheritance or succession tax on transfers caused by the death of said Robert H. Hunt, and from taking any action to collect any estate, inheritance or succession tax from the Estate of Robert H. Hunt, the Security-First National Bank of Los Angeles as administrator with the will annexed of the Estate of Robert H. Hunt, or the complainant.

And it is further ordered that the complainant give notice to each of the said respondents to appear before this court on Monday, April 6, 1936, at two o'clock in the afternoon, at the Federal Building, Boston, Massachusetts, to show cause why the prayers of said complainant should not be granted, and it is further

Ordered that notice be given by the complainant by serving a summons and a copy of this order upon each of said respondents, said service to be made by the United States marshals for the respective districts wherein said respondents reside or may be found.

By the Court,

EDITH G. ROLLINS,

Deputy Clerk.

2-28-36.

GEO. C. SWEENEY, *D. J.*

On the ninth day of March, A. D. 1936, the United States marshal for the District of Massachusetts made the following Return into court:

MARSHAL'S RETURN OF SERVICE.

UNITED STATES OF AMERICA

UNITED STATES DISTRICT OF MASSACHUSETTS, ss.

I hereby certify and return, that on the third day of March 1936, I received the within subpoena in equity, and on the same day made service upon the within named Henry F. Long, Commissioner of Corporations for the Commonwealth of Massachusetts, by giving to him in hand, a true and attested copy of the within subpoena in equity.

JOHN J. MURPHY, *United States Marshal,*
by JOS. M. MAHER,
Deputy United States Marshal.

On the thirteenth and sixteenth days of March, A. D. 1936, the United States marshals for the Northern District of California and the Southern District of California made the following Returns into court:

MARSHAL'S RETURN OF SERVICE.

UNITED STATES OF AMERICA,

SOUTHERN DISTRICT OF CALIFORNIA, ss.

I hereby certify and return that I served the annexed restraining order and order of notice on the therein-named Frank P. Sproul, Inheritance Tax Appraiser of the State of California, by handing to and leaving a true and correct copy thereof with Frank P. Sproul, Inheritance Tax Appraiser of the State of California, personally at Los Angeles in said District on the third day of March, A. D. 1936.

ROBERT E. CLARK, *United States Marshal,*
by A. S. MERRICK, *Deputy.*

MARSHAL'S RETURN OF SERVICE.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF CALIFORNIA, ss.

I hereby certify and return that I served the annexed restraining order and order of notice on the therein-named W. H. H. Gentry, Inheritance Tax Attorney for the State of California, by handing to and leaving a true and correct copy thereof with W. H. H. Gentry personally at Sacramento, Calif., in said District on the third day of March, A. D. 1936.

GEORGE VICE, *United States Marshal,*
by HAYDEN SAUNDERS, *Deputy.*

MARSHAL'S RETURN OF SERVICE.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF CALIFORNIA, ss.

I hereby certify and return that I served the annexed restraining order and order of notice on the therein-named Ray L. Riley, Controller of the State of California, by handing to and leaving a true and correct copy thereof with Ray L. Riley, personally at Sacramento, Calif., in said District on the third day of March, A. D. 1936.

GEORGE VICE, *United States Marshal,*
by HAYDEN SAUNDERS, *Deputy.*

This cause was thence continued to the present March Term, A. D. 1936, when, to wit, March 17, 1936, the following Motion to Dismiss of Ray L. Riley, W. H. H. Gentry, and Frank P. Sproul is filed:

MOTION TO DISMISS BY THE RESPONDENTS RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA, AND FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA, APPEARING SPECIALLY ONLY BUT NOT GENERALLY, FOR THAT PURPOSE.

[Filed March 17, 1936.]

Now come the respondents, Ray L. Riley, Comptroller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, and Frank P. Sproul, Inheritance Tax Appraiser of the State of California, appearing specially only, and not generally, and solely for the purpose of objecting to the jurisdiction of this court over them in this cause, and move the court to dismiss the bill of complaint as to them for the following reasons:

1. It appears from the face of the bill that none of these respondents are making any claims as citizens of a state, but that the acts or threatened acts of the alleged claimants complained of are acts which, if done or to be done by them at all, would be done by them as public officers or representatives of the State of California, and, therefore, this court is without jurisdiction over them under the so-called Federal Interpleader Act as amended, referred to in the bill, or otherwise, to entertain the bill of complaint or grant any of the relief prayed for therein.

2. It appears from the face of the bill that these respondents are made parties thereto, solely in their capacity as public officers and representatives of the State of California in a matter in which the pecuniary interests of that State are involved, and, in the absence of its consent, this court has no jurisdiction over these respondents in view of the Eleventh Amendment of the Constitution of the United States.

3. Under the law of California none of these respondents have made any legal determination, nor have they any power or authority to legally determine, that the decedent Robert H. Hunt was domiciled in or a resident of the State of California at the time of his death, nor have they threatened in any way to make any such determina-

tion, nor have any of these respondents any authority whatsoever, nor have they threatened, to levy or assess any inheritance, estate, or other tax against the estate of said Robert H. Hunt, or to collect any such tax and will have no such authority except and until such a tax, if any, may be decreed, levied and/or assessed by the Superior Court of the State of California in and for the County of Los Angeles in the ordinary and due course of the proceedings in said court referred to in paragraph 5 of the bill of complaint, which court has the sole and exclusive jurisdiction and authority to hear and determine all questions in relation to any inheritance or estate tax and to state or levy and determine the amount, if any, thereof, and none of said respondents have any authority whatsoever other than as may be set forth in Section 445 of the Political Code of California and in the Inheritance Tax Act, Chapter 821, General Laws, in effect August 2, 1921, and amendments thereto, which authority they have only in their capacity as public officials and representatives of the State of California, and that therefore, the plaintiff's bill is in substance against the State of California, and this court is without jurisdiction over these respondents in view of the eleventh amendment of the Constitution of the United States.

In so far as they may properly do so without thereby waiving their special appearance and without submitting themselves generally to the jurisdiction of this court, these respondents further desire to call this court's attention to the following, which appear from the face of the bill, as further reasons for the granting of this motion, in that they show that the alleged cause of action, if any there be, is not one within the purview of the so-called Federal Interpleader Act as amended, and that therefore, there has been no valid service of process on these respondents and this court has no jurisdiction over them, for the validity of the service of process and jurisdiction of this court over these respondents must be grounded, if at all, upon the applicability of said Act, as amended, to the circumstances alleged:

(a) The facts alleged in the bill are insufficient in equity to sustain a bill of interpleader or a bill in the nature of interpleader.

(b) It appears from the face of the bill that there are not two or more adverse claimants claiming to be entitled to the same money or property of the plaintiff.

(c) The plaintiff has, under the law of the State of California, a plain, adequate and complete remedy at law and this court has no power to grant the relief prayed for.

Wherefore, these respondents pray that this court dismiss the bill of complaint as to them, with costs.

Respectfully submitted,

By their Attorneys,

NORMAN W. BINGHAM, Jr.,
GEORGE S. FULLER,
W. H. H. GENTRY.

On the said seventeenth day of March, A. D. 1936, the following Special Appearance of Ray L. Riley, Controller, Frank P. Sproul, Inheritance Tax Appraiser, and W. H. H. Gentry, Inheritance Tax Attorney, of the State of California is filed:

SPECIAL APPEARANCE.
[Filed March 17, 1936.]

We appear for Ray L. Riley, Comptroller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, and Frank P. Sproul, Inheritance Tax Appraiser of the State of California, specially only, but not generally, and without submitting said respondents or any of them generally to the jurisdiction of this court, but for the sole purpose of objecting to the jurisdiction of this court over said respondents or any of them.

NORMAN W. BINGHAM, Jr.,
GEORGE S. FULLER,
Address: One Federal Street, Boston, Massachusetts.
W. H. H. GENTRY,
Inheritance Tax Attorney,
Sacramento, California.

On the eighteenth day of said March, the following Motion to Vacate Restraining Order is filed:

MOTION BY THE RESPONDENTS, RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA, AND FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA, APPEARING SPECIALLY ONLY, BUT NOT GENERALLY FOR THAT PURPOSE, TO VACATE THE TEMPORARY RESTRAINING ORDER WHICH WAS GRANTED FEBRUARY 28, 1936.

[Filed March 18, 1936.]

Now comes the respondents, Ray L. Riley, Comptroller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, and Frank P. Sproul, Inheritance Tax Appraiser of the State of California, appearing specially only, and not generally, and solely for the purpose of objecting to the jurisdiction of this court over them in this cause, and move this court for the following reasons to vacate the temporary restraining order which was granted by this court on February 28, 1936:

1. It appears from the face of the bill that none of these respondents are making any claims as citizens of a state, but that the acts or threatened acts of the alleged claimants complained of are acts which, if done or to be done by them at all, would be done by them as public officers or representatives of the State of California, and, therefore, this court was without jurisdiction over them under the so-called Federal Interpleader Act as amended, referred to in the bill, or otherwise, to grant the restraining order.

2. It appears from the face of the bill that these respondents are made parties thereto, solely in their capacity as public officers and representatives of the State of California in a matter in which the pecuniary interests of that State are involved, and, in the absence of its consent, this court has no jurisdiction over these respondents in view of the Eleventh Amendment of the Constitution of the United States, and the restraining order is, therefore, invalid by reason of such lack of jurisdiction.

3. Under the law of California none of these respondents have

any power or authority to determine the domicile of the decedent for the purpose of the California inheritance, succession or estate taxes, nor to determine the amount of such taxes or assess them, but the Superior Court of the State of California in and for the county of Los Angeles has the sole and exclusive jurisdiction, power and authority in such matters, and these respondents have only such power and authority in the premises as is set forth in Section 445 of the Political Code of California and in the Inheritance Tax Act, Chapter 821, General Laws, in effect August 2, 1921, and amendments thereto, which authority they have only in their capacity as public officials and representatives of the State of California, and, therefore, this court is without jurisdiction over these respondents in view of the Eleventh Amendment of the Constitution of the United States, and the restraining order is invalid by reason of such lack of jurisdiction. Respectfully submitted,

By their Attorneys,

NORMAN W. BINGHAM, Jr.,
GEORGE S. FULLER,
W. H. H. GENTRY.

Thereupon, to wit, March 23, 1936, the Honorable Elisha H. Brewster, District Judge, sitting, said above mentioned motion of Ray L. Riley et al. to vacate the temporary restraining order is heard in part by the court and it is ordered by the court that the time for filing answer by defendant Henry P. Long be extended to March 30, 1936, present injunction to stand.

On the said twenty-third day of March, A. D. 1936, the following general Appearance for respondent, Henry F. Long, is filed:

APPEARANCE.

[Filed March 23, 1936.]

Worcester County Trust Co., Executor,

v.

Henry F. Long, Commissioner et als.

The clerk will enter my appearance for the respondent, Henry F. Long.

PAUL A. DEVER,
Attorney General of Massachusetts,
by RAYMOND H. FAVREAU,
Assistant Attorney General.

On the thirty-first day of March, A. D. 1936, the following Answer of Henry F. Long, Commissioner, is filed by consent:

ANSWER OF THE RESPONDENT HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS.

[Filed by consent March 31, 1936.]

1. The respondent admits the allegations in paragraph 1 of plaintiff's bill of complaint.

2. The respondent admits the allegations of paragraph 2 of plaintiff's bill of complaint.

3. The respondent neither admits nor denies the allegations in paragraph 3 of the plaintiff's bill of complaint but leaves the plaintiff to proof of the same.

4. The respondent admits allegations in paragraph 4 of the plaintiff's bill of complaint.

5. The respondent admits allegations in paragraph 5 of the plaintiff's bill of complaint.

6. Answering paragraph 6 respondent says that as Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts he is entitled to collect all estate, inheritance, legacy and succession taxes due from the plaintiff as executor of the will of Robert H. Hunt, deceased, by reason of the fact that Robert H. Hunt was domi-

cited in the Commonwealth of Massachusetts at the time of his death, and your respondent denies that the California officials named are entitled to collect any such taxes from plaintiff.

7. Answering paragraph 7 of plaintiff's bill of complaint your respondent is without knowledge of the tax laws of the State of California but avers that under the laws of the Commonwealth of Massachusetts a tax lien is imposed on all property of the Estate of said Robert H. Hunt until all taxes assessed by your respondent are paid, and your respondent claims that he is entitled to the benefits of such liens.

8. Your respondent avers that said Robert H. Hunt was domiciled in Massachusetts at the time of his decease, and that as Commissioner of Corporations and Taxation of Massachusetts he is entitled to collect from plaintiff all estate, inheritance, legacy and succession taxes due.

9. The respondent neither admits nor denies the allegations in paragraph 9 of the plaintiff's bill of complaint but leaves the plaintiff to prove the same.

10. The respondent is without knowledge as to whether it is impossible in law or in fact for the said Robert H. Hunt to have been domiciled at his death in both Massachusetts and California but denies that said decedent was domiciled in California.

11. The respondent being of opinion that the complainant and the respondent in this case are of the one understanding that Robert H. Hunt was domiciled in Massachusetts at the time of death there can be no controversy, and your respondent therefore answers that he is entitled to collect the amount and that California is in no way to be considered as the place of domicile of the said Robert H. Hunt.

12. Answering paragraph 12 the respondent says that an attempt on the part of the officials of California to collect estate, inheritance, legacy and succession taxes from the plaintiff may deprive your respondent of his right to collect such taxes from the estate of the decedent.

13. The respondent is without knowledge as to whether the complainant has an adequate remedy at law.

14. The respondent understands that a bond has been filed.

HENRY F. LONG,
Commissioner of Corporations and Taxation of The Commonwealth of Massachusetts.

PAUL A. DEVER, *Attorney General,*
by RAYMOND H. FAVREAU,
Assistant Attorney General.

On the thirty-first day of March, A. D. 1936, the Honorable Elisha H. Brewster, District Judge, sitting, said cause comes on to be further heard, on the motion to dismiss of defendants Ray L. Riley, W. H. H. Gentry and Frank P. Sproul and is thence taken under advisement.

At the same term, to wit, April 2, 1936, the following Motion by Complainant for a Temporary Injunction is filed:

MOTION BY COMPLAINANT FOR A TEMPORARY INJUNCTION.
[Filed April 2, 1936.]

Now comes the complainant, Worcester County Trust Company, executor under the will of Robert H. Hunt, and moves this court to enter a temporary injunction enjoining the respondents and each of them, their agents and servants, until further order of this court, from instituting or prosecuting any suit or proceeding in any state court or in any United States court on account of any claims for taxes, liens or penalties against money or property in the custody or possession of the complainant, and from instituting or prosecuting any suit or proceeding in any state court or in any United States court on account of the complainant's obligation to pay, adjust and settle any and all estate, inheritance and succession taxes to or with the respondents, tax officials of the States of Massachusetts and California.

Respectfully submitted,

WORCESTER COUNTY TRUST COMPANY,
Executor u/w Robert H. Hunt,
by MERRILL S. JUNE,
BRADLEY B. GILMAN,
its Attorneys.

On the sixth day of said April, 1936, the Honorable Elisha H. Brewster, District Judge, sitting, on the return day of the restraining order and order of notice, this cause comes on to be heard on the prayer for preliminary injunction and on plaintiff's motion for a temporary injunction, the restraining order being continued until further order of the court and the other matters being continued for one week, decision being reserved.

On the thirteenth day of April, 1936, said cause comes on for further hearing, the Honorable Elisha H. Brewster, District Judge as aforesaid, sitting, on the plaintiff's motion for temporary injunction and it is ordered by the court that the temporary restraining order now in force be continued in force to April 21, 1936, said order being again continued in force to April 27, 1936.

On the twenty-seventh day of April, A. D. 1936, an opinion of the court is announced, denying Respondent's Motion to Dismiss, the following Decree being entered in accordance therewith:

DECREE DENYING RESPONDENT'S MOTION TO DISMISS.

April 27, 1936.

BREWSTER, J. This cause came on to be heard at this term upon motion of the respondents, Ray L. Riley, W. H. H. Gentry and Frank P. Sproul, to dismiss the bill of complaint for want of jurisdiction and was argued by counsel, and thereupon, upon consideration thereof, on the twenty-seventh day of April, 1936, the Honorable Elisha H. Brewster, District Judge, announced his decision and caused a minute entry thereof to be made as follows:

It is hereby ordered, adjudged and decreed that the motion of the respondents, Ray L. Riley, W. H. H. Gentry and Frank P. Sproul, to dismiss the bill of complaint for want of jurisdiction be and hereby is denied.

ELISHA H. BREWSTER,

District Judge.

Also on the said twenty-seventh day of April, A. D. 1936, said cause comes on for further hearing on the matter of the plaintiff's motion for temporary injunction and it is ordered that the restraining order be continued in force to April 29, 1936, injunction to issue.

On the twenty-eighth day of April, A. D. 1936, the following Order of Injunction is entered:

ORDER OF INJUNCTION.

April 28, 1936.

BREWSTER, J. Upon the filing of the complaint in the nature of a bill of interpleader, duly verified, praying among other things for the determination of the domicile of Robert H. Hunt, of whose estate the complainant has been appointed executor, and the liability of said estate and said executor to state taxation, and after hearing upon motions by the respondents, Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, and Frank P. Sproul, Inheritance Tax Appraiser of the State of California, to dismiss the complaint as to them for want of jurisdiction of this court over them, and to vacate the temporary restraining order heretofore granted, and it appearing there is danger of irreparable injury to the complainant, it is

Ordered that the respondents, Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California, and each of them, their agents, and servants, be, and they are hereby, enjoined until further order of this court, from taking any action to fix or assess any estate, inheritance or succession tax on transfers caused by the death of said Robert H. Hunt, and from taking any action to collect any estate, inheritance or succession tax from the Estate of Robert H. Hunt, the Security-First National Bank of Los Angeles as administrator with the will annexed of the Estate of Robert H. Hunt, or the complainant.

Ordered that notice be given by the complainant by serving a summons and a copy of this order upon each of said respondents, said service to be made by the United States marshals for the respective districts wherein said respondents reside or may be found.

By the Court,

JOHN E. GILMAN, JR.,

Deputy Clerk.

April 28, 1936.

E. H. B.,
D. J.

On the said twenty-eighth day of April, A. D. 1936, the following Motion for Stay of Proceedings Pending Appeal is filed and allowed:

MOTION BY RESPONDENTS, RAY L. RILEY, CONTROLLER ET AL., FOR STAY OF PROCEEDINGS PENDING APPEAL.

[Filed and allowed April 28, 1936.]

Now come the respondents, Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California, appearing specially only as set forth in their special appearance heretofore filed, and move that, whereas this court, on April 28, 1936, has granted an injunction against said respondents, and whereas said respondents intend to take an appeal, the proceedings in other respects in this court be stayed for a period of thirty days after April 28, 1936, and, if said respondents take their appeal within that time, thereafter until the expiration of thirty days after said appeal shall have been finally determined, and that the time within which said respondents should be required to file their answer or other pleadings be correspondingly extended.

By their Attorneys,

NORMAN W. BINGHAM, JR.,
GEORGE S. FULLER,
W. H. H. GENTRY,
BURNHAM, BINGHAM, PILLSBURY, DANA & GOULD.

Allowed April 28, 1936.

E. H. B.,
D. J.

From the aforementioned order of injunction and decree denying motion to dismiss, Ray L Riley, Controller of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California, and W. H. H. Gentry, Inheritance Tax Attorney of the State of Cali-

fornia, claim an appeal to the United States Circuit Court of Appeals for the First Circuit on the twentieth day of May, A. D. 1936, which appeal was allowed by the court on the same day.

OPINION.

April 27, 1936.

BREWSTER, J. This proceeding is brought under the new Federal Interpleader Act (Pub. No. 422, approved January 20, 1936). This Act amends Section 24 of the Judicial Code as amended by inserting at the end a new subparagraph 26. The material provisions of this amendment follow:

It confers upon the court original jurisdiction

"(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any . . . corporation, . . . having in . . . its custody or possession money or property of the value of $500 or more, . . . or being under any obligation written or unwritten to the amount of $500 or more, if—

(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising . . . by virtue of any such obligation; and

(ii) . . .

(b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for

all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same."

The complainant is the executor under the will of Robert H. Hunt. The respondents named in the proceeding are officials of the State of California and the Commonwealth of Massachusetts. The respondent Long has appeared generally and filed an answer to the bill. A special appearance has been entered on behalf of the California respondents for the purpose of moving to dismiss the bill and to dissolve outstanding restraining orders. Inasmuch as the motion to dissolve injunctions will stand or fall with the motion to dismiss, it will only be necessary to consider the latter. The motion, of course, admits, for present purposes, all facts properly pleaded in the bill of complaint.

It is alleged that the respondent Henry F. Long is Commissioner of Corporations and Taxation in the Commonwealth of Massachusetts and a citizen of Massachusetts; that the respondent Riley is comptroller, the respondent Gentry, inheritance tax attorney, and the respondent Sproul, inheritance tax appraiser of the State of California, all citizens of California.

On June 11, 1935, Robert H. Hunt died testate, leaving real estate and bank deposits in California and bank deposits in Massachusetts and considerable intangible personal property, most of which is in

the custody and possession of the complainant in Worcester, Massachusetts.

On June 26, 1935, the will of said Hunt was admitted to probate in the Probate Court for the County of Worcester, Massachusetts. On July 29, 1935, ancillary proceedings were instituted in California pursuant to which the Security-First National Bank of Los Angeles was appointed administrator with the will annexed of the Estate of said Hunt by the Superior Court of the State of California in and for the County of Los Angeles.

It is alleged that the complainant is under obligations to pay any and all estate, inheritance and succession taxes to the officials of the State of California and the Commonwealth of Massachusetts, and that the officials of each state are asserting the right to assess and collect succession and inheritance taxes upon the transfer of intangibles upon the theory that the decedent, at the time of his death, was domiciled in the respective state; that there is involved in this controversy over $100,000, which sum the complainant has in its custody, and the complainant has given bond in accordance with the provisions of the said Interpleader Act.

It is further alleged that the threatened collection of both the California and Massachusetts taxes, each based upon an inconsistent claim of domicile, will deprive the estate of property without due process of law and will deny to it equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States.

The complainant has caused process to issue to the respondents in Massachusetts and in California and has secured a temporary restraining order against each from taking any further proceedings to assess, determine or collect the inheritance taxes due from the estate. Complainant prays that this court require the respondents to plead their adverse claims to the money and property in the possession of the complainant, or to the benefits arising by virtue of the complainant's obligation to pay the inheritance taxes. The complainant further prays that the court determine the domicile of the decedent, the persons entitled to the said money, property or benefits, and the sum owed to any of the respondents; and that the court permanently en-

join respondents of the non-domiciliary state from taking any action to determine or collect inheritance taxes based upon domicile except as determined by this court.

Complainant furthermore asks that it be discharged of all further obligations to the respondents upon compliance by it with such decree as the court may make in the case.

It thus appears from the allegations of the bill that the taxing authorities in the two states are asserting conflicting rights to compute a legacy and succession tax, based upon the assumption that the decedent was domiciled in their respective states, and this court is asked not only to determine which of the states is entitled to tax transfers of intangibles but it is also required to determine the amount of the tax due each state and enter a decree requiring the payment of the taxes thus determined, which payment shall operate to discharge the Massachusetts executor of all liability for such taxes.

It is now settled law that intangibles have only one situs for the purpose of inheritance or succession taxes, and that that situs is in the domicile of the decedent at the time of his death.

First National Bank of Boston, Excr. v. *Maine,* 284 U. S. 312;

The Farmers Loan & Trust Co. Excr. v. *Minnesota,* 280 U. S. 204;

City Bank Farmers Trust Co. Excr. v. *Schnader,* 291 U. S. 24.

It is equally well settled that a person can have at one time only one domicile, however many places of residence he may have maintained in his lifetime.

Tax Collector of Lowell v. *Hanchette,* 240 Mass. 557;
Commonwealth v. *Bogigian,* 265 Mass. 531;
United States ex rel Thomas v. *Day,* 29 F.(2d) 485.

It is, therefore, obvious that if the taxing officials of both of these states carry out their threat of imposing an inheritance tax upon the transfer of decedent's intangibles, one or the other of the states will be violating the Fourteenth Amendment.

First National Bank of Boston, Excr. v. *Maine, supra; Anglo-California Trust Co.* v. *Riley,* 220 Cal. 26.

I fully appreciate the difficulties encountered in preventing this unconstitutional exaction if the complainant cannot avail itself of the Interpleader Act. The difficulties are well illustrated in the case of *Estate of John T. Dorrance* where the States of Pennsylvania and New Jersey have each exacted a tax of several million dollars upon the transfer of intangibles which Dorrance left at the time of his death. The Pennsylvania courts of last resort (*Dorrance, Estate,* 309 Pa. 151) held that Dorrance was domiciled in that state, and, so far as the litigation has proceeded in the New Jersey courts they have been unanimous in holding that Dorrance was domiciled in New Jersey.

In re Dorrance, 115 N. J. Eq. 268; 116 N. J. Eq. 204; 13 N. J. Misc. 168.

See also *Hill* v. *Martin,* 296 U. S. 393 affirming 12 F. Supp. 746.

I can very readily agree with complainant's counsel that the question here presented is one of unusual public interest. A short cut to the answer would be to hold that the two states were the adverse claimants and that consequently the jurisdictional requirement of the statute was not met since a state cannot be a citizen. I do not believe, however, that the matter can or ought to be dismissed in so summary a fashion.

It is the contention of the respondents that the proceeding is one against states and therefore is prohibited by the Eleventh Amendment to the Constitution of the United States which provides that the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced, or prosecuted, against one of the United States by citizens of another State.

The recent Act has extended the scope of earlier Interpleader acts by bringing within its ambit not only bills of interpleader but bills in the nature of interpleader. These proceedings are by the terms of the Act described as suits in equity and must be regarded as suits within the purview of the Eleventh Amendment. The matter is reduced to the single question whether, on the allegations of the bill,

we must hold that the suit is against the state of California, the respondent officials named in the proceedings being merely nominal parties.

The fact that the respondents are joined in their official capacity as representatives of the State does not necessarily defeat jurisdiction. In suits by or against administrators or guardians, the jurisdictional diversity of citizenship is determined with reference to the citizenship of the administrator or the guardian without regard to the citizenship of the heirs or the ward, even though these have a very definite and substantial interest in the outcome of the litigation.

Rice v. *Houston,* 13 Wall. 66;
Amory v. *Amory,* 95 U. S. 186;
Continental Insurance Co. v. *Rhoads,* 119 U. S. 237;
Mexican Central Ry. Co. v. *Eckman,* 187 U. S. 429.

The rule has been extended to cases where the administrator sues for the benefit of certain named beneficiaries entitled by statute to the amount recovered.

Mecom v. *Fitzsimmons Drilling Co.,* 284 U. S. 183.

It is to be noted that, in the case of a guardian, the rule applies only if the laws of the State of his appointment give him the right to sue in his own name on behalf of the ward. In a suit by a guardian ad litem or next friend, the citizenship of the minor controls.

Voss v. *Neineber,* 68 F. 947;
Mecom v. *Fitzsimmons Drilling Co., supra.*

It is therefore important to inquire whether any taxing official of California is authorized to sue for the tax in his own name, or must the suit be brought in the name of the State?

An examination of the California statutes leads to the conclusion that the comptroller, one of the respondents named, is the one in whose name the proceedings to recover taxes would probably be brought. While there is no express provision of the statute imposing upon the comptroller the duty of instituting proceedings to recover inheritance taxes, presumably due to the fact that the court in which the estate is administered not only determines but enforces the col-

lection of the taxes, the California statutes, however, do impose a tax upon transfers other than testamentary transfers, and in such cases the comptroller has the duty of instituting appropriate proceedings to collect the tax upon such transfers, and appellate proceedings are prosecuted in his name. In any event, I find nothing in the statute that requires that the suit be brought exclusively in the name of the State of California.

The State is not made a nominal party to these proceedings at bar, but it is now well settled that the jurisdiction of the Federal Court is not to be determined by reference solely to the nominal parties appearing on the record. In several cases it has been held that this court is without jurisdiction to entertain suits against State officials on the ground that, while the suit was nominally against the officials, they were, in fact, against the State as a sovereignty.

Cunningham v. *Macon & Brunswick R. R. Co.*, 109 U. S. 446;
In re Ayers, 123 U. S. 443;
Hagood v. *Southern et al.*, 117 U. S. 52;
Fitts v. *McGhee*, 172 U. S. 516.

On the other hand, in many suits against State officials, the jurisdiction of the court has been upheld.

Davis v. *Gray*, 16 Wall. 203;
Board of Liquidation v. *McComb*, 92 U. S. 531;
Poindexter v. *Greenhow*, 114 U. S. 270;
Pennoyer v. *McConnaughty*, 140 U. S. 1;
Tindal v. *Wesley*, 167 U. S. 204;
Smyth v. *Ames*, 169 U. S. 466;
Prout v. *Starr*, 188 U. S. 537;
Gunter v. *Atlantic Coast Line R. R. Co.*, 200 U. S. 273;
Ex parte Young, 209 U. S. 123;
Sterling v. *Constantin*, 287 U. S. 378;
Missouri v. *Fiske*, 290 U. S. 18.

It is not easy to trace definitely the line which marks the boundary between those cases which have come within the inhibitions of the Eleventh Amendment and those which have not. In many of the

cases the statement approved by the court is to the effect that a suit in equity may be entertained against individuals for the purpose of preventing them, as officers of a State, from enforcing an unconstitutional enactment under the authority of which they were about to commit some specific wrong or trespass, to the injury of plaintiff's right.

Prout v. *Starr, supra;*
Pennoyer v. *McConnaughty, supra;*
In re Tyler, 149 U. S. 164;
Scott v. *Donald,* 165 U. S. 58;
Terrace v. *Thompson,* 263 U. S. 197;
Cavanaugh v. *Looney,* 248 U. S. 453.

But in *Gunter* v. *Atlantic Coast Line R. R. Co., supra,* Mr. Justice White laid down the rule in the following language:

> "A suit against state offcers to enjoin them from enforcing a tax alleged to be in violation of the Constitution of the United States is not a suit against a state within the prohibition of the Eleventh Amendment."

The more recent case of *Sterling* v. *Constantin, supra,* was against the governor and other officials of the State of Texas. In that case the court, speaking through Mr. Justice Hughes, said:

> "*First.* The District Court had jurisdiction. The suit is not against the State. The applicable principle is that where state officials, purporting to act under state authority, invade rights secured by the Federal Constitution, they are subject to the process of the federal courts in order that the persons injured may have appropriate relief."

It is difficult to fully harmonize the decisions in the many cases in which the above doctrine has been applied. I am convinced from my study of them, however, that the weight of authority would support the jurisdiction of a Federal Court to entertain a suit in equity brought to restrain the taxing officials of a State from proceeding to exact an inheritance tax alleged to be in contravention of the Constitution of the United States. The same would be true if the officer,

acting under a valid State law, exceeded the authority conferred by the State.

Sterling v. *Constantin, supra.*

In *Poindexter* v. *Greenhow, supra,* the court points out the distinction between the State and the Government of the State and stresses the point that when the government acts within the sphere of the agency, it is a perfect representative "but outside of that, it is a lawless usurpation".

From an examination of the cases which have denied to the court jurisdiction because of the Eleventh Amendment, it is apparent that the court regarded a suit as one against the State if the purpose of it was to merely test the constitutionality of the statute (*Fitts* v. *McGhee, supra*), or to compel the performance of some direct obligation of the State (*In re Ayers, supra; Hagood* v. *Southern, supra*), or, if the plaintiff attacked the validity of title to property vested in the State (*Cunningham* v. *Macon & Brunswick R. R. Co., supra*), or if the complainant undertook to control the discretion of any State officers (*Board of Liquidation* v. *McComb, supra; Louisiana* v. *Jumel,* 107 U. S. 711). Again, the suit is deemed to be one against the State if it is necessary to join it in order that the decrees of the court may be binding upon it.

After stating the established doctrine respecting actions at law brought against State officials, the court in *Cunningham* v. *Macon & Brunswick R. R. Co., supra,* (page 456) added this language:

> "Courts of equity proceed upon different principles in regard to parties. As was said in *Barney* v. *Baltimore,* 6 Wall, 280, there are persons who are merely formal parties without real interest, and there are those who have an interest in the suit, but which will not be injured by the relief sought, and there are those whose interest in the subject-matter of the suit renders them indispensible as parties to it. Of this latter class the court said, in *Shields* v. *Barrow,* 17 How. 130, 'they are persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without affecting that interest or leaving the controversy in such a condition

that its final disposition may be wholly inconsistent with equity and good conscience.' "

It does not follow, however, that the State is a necessary party if it is only consequentially affected.

Fowler v. *Lindsey,* 3 Dallas 411;
Poindexter v. *Greenhow, supra.*

Tested by those criteria which have been judicially suggested for the determination of the question of jurisdiction, the suit at bar cannot be considered to be a suit against the State; California is not named as a party in the record; the suit is not brought to specifically enforce an obligation of the State; it has no purpose to control the discretion of executive or administrative officers or administering funds actually in the public treasury. Nor is it necessary to make the State a party in order to carry into effect an appropriate decree.

The purpose of this bill is to prevent an illegal or unconstitutional exaction of inheritance taxes from the estate of its testator. Adequate relief will be afforded by a determination of the domicile of the testator and enjoining those charged with the duty of determining the tax liability to the respective states from proceeding so to do in a manner inconsistent with such determination.

It is objected that the respondents have no personal interest in the subject-matter of this interpleader, but in many of the cases in which jurisdiction has been sustained, the respondents were affected only in their official capacity.

The ratio *decidendi* in the cases is clear. In its inception the controversy is one between individuals, the respondent seeking to justify his acts by invoking the authority of a State law. He cannot rest upon the mere assertion of the defense. He is required to establish it. If the law is invalid, or if he has exceeded his authority, his defense fails.

Up to this point I have considered only the question whether it is necessary to treat the proceeding as one against a State not named on the record as a nominal defendant.

For the reasons above outlined, I have reached the conclusion that such a proceeding does not come within the inhibitions of the Eleventh Amendment.

There are other contentions of the respondents to be considered. It is urged that the court is powerless to act in the premises because the determination of the tax under the laws of California is a judicial proceeding, and not an administrative one, as in Massachusetts. The respondent Sproul is an inheritance tax appraiser, appointed by the respondent Riley, as comptroller; and the respondent Gentry is the inheritance tax attorney.

It is quite apparent from an examination of the applicable statutes of California (Inheritance Tax Act of 1921; Inheritance Tax Act of 1935) that the inheritance tax appraiser, designated by the court having jurisdiction over the estate, performs functions which, at least, could be said to be quasi-judicial. This, however, would not prevent this court, under the Interpleader Act, from issuing process or an order of injunction against him. The terms of the Act provide that "Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States Court on account of such money or property or on such instrument or obligation until the further order of the Court; . . . ."

In view of the provisions of this statute, Section 265 of the Judicial Code prohibiting injunctions against a State court does not apply.

It is also argued that the allegations of the bill do not bring the case within the purview of the statute. I am not impressed by this argument. In the first place, the bill is not a strict bill of interpleader but a bill in the nature of interpleader, and the distinction between the two is that the latter lies when there is shown in addition to multiple vexation some other reason for coming into equity, for example, the administration of a trust.

The law imposes upon the executor an obligation to pay all estate, inheritance and succession taxes due both to the Commonwealth of Massachusetts and to the State of California, and, therefore, as one being under obligations, written or unwritten, to the amount of $500 or more, it may interplead adverse claimants claiming the benefits arising by virtue of such obligation. It has given the bond required

by the statute, and I apprehend no serious difficulty in drawing an order, or decree, which will, when complied with, discharge the complainant and release the bond, and this without unduly interfering with the authorities whose duty it is to determine the extent of the taxes due the respective States. It may be that ultimately the court will not be able to grant all the relief prayed for in the bill of interpleader, but if the court confines its determination to the question of domicile and decrees that the executor shall discharge the tax liability determined by the respective taxing officials in a manner consistent with the decision of this court, relating to the domicile of the testator, it will thereby effectually prevent the unlawful exaction of double tax upon transfers of intangibles and satisfactorily accomplish the purposes of the interpleader. I do not think the court, in these proceedings, can go so far as to adjudicate the exact amount of the tax due to each State. It can only decide whether the decedent was a resident of Massachusetts or of California, if it is determined that he was a resident of California, he then is a non-resident of Massachusetts and vice versa.

It has been argued on behalf of these respondents that it was never intended by Congress that the Interpleader Act should be used to settle controversies such as is here presented. It is quite possible that we have to deal with a factual situation which was not brought to the attention of Congress. No legislation can contemplate every combination of circumstances that may arise to which the principles embodied in it may be applied. Clearly, it was the intention of Congress to afford an opportunity to determine, in one proceeding, conflicting interests in money, property or in benefits accruing from obligations. In my opinion, the plaintiff has brought his case within the fair intendment of the Act.

An injunction may issue restraining, until further order of the court, further action on the part of the respondents relative to the determination, imposition or collection of the inheritance taxes. The complainant may have other equitable relief according to its prayers.

Respondents' motion to dismiss is denied.

RESPONDENTS' ASSIGNMENT OF ERRORS.

[Filed May 20, 1936.]

The respondents, Ray L. Riley, Controller of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California, and W. H. H. Gentry, Inheritance Tax Attorney of the State of California, in connection with their petition for appeal, and appearing specially only as stated therein, make the following assignment of errors which they aver occurred in the trial of this case, to wit:

1. The District Court erred in ruling that the present suit comes within the scope of the Federal Interpleader Act.

2. The District Court erred in ruling that the Federal Interpleader Act, construed to include within its scope the present suit, is not invalid to that extent as being in violation of the Eleventh Amendment of the Constitution of the United States.

3. The District Court erred in ruling that the present suit is not a suit in law or in equity commenced or prosecuted against the State of California by a citizen of another State and in violation of the Eleventh Amendment of the Constitution of the United States.

4. The District Court erred in ruling that it had jurisdiction to require that there be tried before and determined by it the alleged controversy as to whether the decedent at the time of his death was domiciled for inheritance tax purposes in the State of California or in the Commonwealth of Massachusetts, notwithstanding the provisions of Article III, §2 of the Constitution of the United States and §233 of the Judicial Code.

5. The District Court erred in ruling that under the California statutes the proceedings to recover the inheritance taxes with respect to the estate of the decedent Robert H. Hunt would probably be brought in the name of the respondent Ray L. Riley, Controller of the State of California.

6. The District Court erred in ruling that it had jurisdiction over these California respondents in the instant cause.

By their Attorneys,

NORMAN W. BINGHAM, JR.,
GEORGE S. FULLER.

On the twentieth day of May, A. D. 1936, a bond on appeal in the sum of two hundred fifty dollars ($250) was filed by the respondents and allowed by the court, the Massachusetts Bonding and Insurance Company acting as surety.

SEVERANCE OF APPEAL BY RESPONDENT HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS.

[Filed May 20, 1936.]

Now comes Henry F. Long, commissioner as aforesaid, and says that he has been asked to join in the appeal by the respondents Ray L. Riley, Controller of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California, and W. H. H. Gentry, Inheritance Tax Attorney of the State of California, from the order and decree granting an injunction made and entered in this court on April 28, 1936, against said California respondents and said Long, commissioner, and declines to join therein.

HENRY F. LONG,
Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts.

PAUL A. DEVER, *Attorney General,*
by RAYMOND H. FAVREAU,
Assistant Attorney General.

PRAECIPE.

[Filed May 26, 1936.]

To the Clerk:

You are requested to take a transcript of record to be filed in the United States Circuit Court of Appeals for the First Circuit, pursuant to an appeal allowed in the above entitled cause and to include in such transcript of record the following and no other papers or exhibits, to wit:

1. Complaint, including Interpleader Act attached thereto.
2. Bond.
3. Restraining order and order of notice.
4. Special appearance of Ray L. Riley, Controller, Frank P. Sproul,

Inheritance Tax Appraiser, and W. H. H. Gentry, Inheritance Tax Attorney, of the State of California.

5. Motion to dismiss.

6. Motion to vacate restraining order.

7. General appearance and answer of Henry F. Long, commissioner.

8. Plaintiff's motion for temporary injunction.

9. Opinion.

10. Decree denying motion to dismiss.

11. Order of injunction.

12. Motion for stay of proceedings pending appeal.

13. Necessary appeal papers.

14. Waiver of appeal by Henry F. Long, commissioner.

NORMAN W. BINGHAM, JR.,
G. S. F.
GEORGE S. FULLER,
Attorneys for the Appellants.

Assented to:

MERRILL S. JUNE,
BRADLEY B. GILMAN,
Attorneys for Worcester County Trust Company, Executor u/w Robert H. Hunt.

A citation on appeal was issued on May 20, 1936, being made returnable in the United States Circuit Court of Appeals for the First Circuit on June 19, 1936, service being acknowledged thereon by the attorneys for the Worcester County Trust Company, executor.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS, ss.

I, James S. Allen, clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the foregoing is the transcript of the record on the appeal of Ray L. Riley, Controller of the State of California, Frank P. Sproul, Inheritance

Tax Appraiser of the State of California, and W. H. H. Gentry, Inheritance Tax Attorney of the State of California, three of the defendants, including true copies of such proofs, entries and papers on file as have been designated by praecipe, in the cause entitled,

No. 4292, EQUITY DOCKET,

WORCESTER COUNTY TRUST COMPANY,
EXECUTOR U/W ROBERT H. HUNT, PETITIONER,

v.

HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS ET AL., RESPONDENTS,

now pending in said District Court.

And I further certify that transmitted herewith are the originals of the petition for appeal, the bond on appeal and the citation on appeal with the acknowledgment of service thereon.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, at Boston, in said District, this twenty-fifth day of June, A. D. 1936.

[SEAL] JAMES S. ALLEN, *Clerk.*

[MEMORANDUM. An order of enlargement of time for docketing case to, and including, June 29, 1936, is here omitted. A. I. CHARRON, *Clerk.*]

On October 19, 1936, a certified copy of an order of the United States Supreme Court denying a petition for a writ of certiorari was filed.

On January 6 and 7, 1937, this cause came on to be heard and was fully heard by the court, Honorable George H. Bingham, Honorable Scott Wilson and Honorable James M. Morton, Jr., Circuit Judges, sitting.

Thereafter, to wit, on March 15, 1937, the following Opinion of the Court and Dissenting Opinion were filed:

OPINION OF THE COURT.

March 15, 1937.

BINGHAM, J. This is an appeal from a decree of the District Court for Massachusetts granting an interlocutory injunction on a bill of complaint in the nature of a bill of interpleader brought by the executor of the Will of Robert H. Hunt under the provisions of Judicial Code, Section 24, as amended by the Act of January 20, 1936 (c. 13, s. 1, 49 Stat. 1096; U. S. C. Title 28, s. 41), which will be found in the footnote.

NOTE. "An Act to amend section 24 of the Judicial Code by conferring on district courts additional jurisdiction of bills of interpleader, and of bills in the nature of interpleader.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 24 of the Judicial Code, as amended, is amended by inserting at the end thereof the following:

"(26) Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader——Twenty-Sixth.——(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified filed by any person, firm, corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of the value or amount of $500 or more, or providing for the delivery or payment of the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if—

"(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligation; and

"(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; or (b) has given bond payable

The complainant, the Massachusetts executor, is a citizen of

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to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one other.

"(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

"(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts where in said claimants reside or may be found.

"(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

"(e) In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 274b of the Judicial code (U. S. C., title 28, sec. 398), any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of the Judicial Code and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 274b of the Judicial Code.

"Sec. 2. The Act entitled 'An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader', approved May 8, 1926 (U. S. C. Supp. III, title 28, sec. 41 (26)), is hereby repealed. Said repeal shall not affect any act done or any right accruing or accrued in any suit or proceeding had or commenced under said Act hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Act had not been repealed hereby."

"Approved, January 20, 1936."

Massachusetts. The respondent, Henry F. Long, is the Commissioner of Corporations and Taxation of Massachusetts and a citizen of that State. The other respondents are Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, and Frank P. Sproul, Inheritance Tax Appraiser of that State, all citizens of California.

In the bill it is alleged that on June 26, 1935, the will of Robert H. Hunt was admitted to probate in Massachusetts; that the complainant was appointed executor under the will; that Mr. Hunt died on June 11, 1935, possessing at the time of his death certain real estate and a sizeable bank deposit in the State of California, and a like bank deposit in Massachusetts and considerable intangible property, the bulk of which was in the custody and possession of the complainant in Massachusetts; that on July 29, 1935, the Security-First National Bank of Los Angeles, California, was appointed administrator with the will annexed of the estate of Mr. Hunt by the Superior Court of California, in ancillary proceedings; that the complainant, as executor, had in its possession money and property of an amount and value exceeding $500, on which the taxing officials of the two States claim the right adversely to each other to assess a tax; that under the applicable statutes of Massachusetts (General Laws, c. 65, ss. 1, 6 as amended, c. 65A and c. 480 of the Acts of 1935) and California (s. 2, 821 of the Laws of 1921 as amended, and s. 3, c. 358 of the Laws of 1935) complainant is also under obligation to pay any and all estate, inheritance and succession taxes to said tax officials of the States of Massachusetts and California, respondents herein, irrespective of any demand made therefor, and that said respondent tax officials of both States are claiming to be entitled to the benefits thereof; that, under the provisions of said tax statutes of each State a tax lien is imposed on all property of the estate of Hunt unless all taxes assessed by said tax officials are paid, and the respondents claim to be entitled to the benefits of such liens.

In paragraphs 8, 9, 10 and 12 of the bill it is alleged:

"8. Your complainant is informed and believes and therefore alleges that the respondent Henry F. Long, commissioner as aforesaid, *has determined* that the said Robert H. Hunt *died domiciled in Mass-*

achusetts, and is asserting and has threatened and is *about to assess and attempt to collect* from your complainant and the Estate in its charge, estate and succession taxes under the provisions of said Massachusetts tax statutes, based upon said domicile or determination of domicile and in an amount in excess of one hundred thousand (100,000) dollars; and that if the said Robert H. Hunt had deceased a non-resident of and not domiciled in Massachusetts the estate and succession taxes under said provisions of Massachusetts tax statutes would be a comparatively nominal amount.

"9. Your complainant is informed and believes and therefore alleges that the respondents, Ray L Riley, comptroller as aforesaid, W. H. H. Gentry, inheritance tax attorney as aforesaid, and Frank P. Sproul, inheritance tax appraiser, as aforesaid, have each severally or as agent one for another, individually or by their agent or agents, *determined* that the said Robert H. Hunt died *domiciled in California* and are asserting and have threatened and are *about to assess and attempt to collect* from your complainant and the Estate in its charge, estate, inheritance and succession taxes under the provisions of said California tax statutes, based upon said domicile or determination of domicile and in an amount in excess of one hundred thousand (100,000) dollars; and that if the said Robert H. Hunt had deceased a non-resident of and not domiciled in California the estate, inheritance and succession taxes under said provisions of California tax statutes would be a comparatively nominal amount.

"10. That it is impossible in law or fact for the said Robert H. Hunt to have been domiciled at his death in both Massachusetts and California and it should not be possible for estate, inheritance and succession taxes to be so asserted, threatened, assessed and collected by the tax officials or representatives of said two States."

"12. That therefore the threatened collection of both the California and Massachusetts taxes, each based upon an *inconsistent claim of domicile,* will deprive your complainant and the Estate in its charge of property without due process of law and deny it equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States; that the threatened assessment and collection of both of said taxes, each based upon an inconsistent claim of domicile, is causing irreparable injury by interfering with the administration of the estate both in California and Massachusetts, causing extra expense, preventing distribution, compelling your complainant to maintain large cash reserves at low interest rates or at no interest to cover the threatened taxes and costs of litigation." (Italics supplied.)

It was further alleged that the main controversy related to a sum of $100,000 or more in the custody or possession of complainant and its obligation with respect thereto under said tax laws; that complainant had no adequate remedy at law; and that it had given bond payable to the clerk of court in such amount and with such sureties as the court had deemed proper, conditioned upon compliance with further orders or decrees of the District Court with respect to the subject-matter of the controversy.

The prayers were (1) for a temporary injunction restraining the respondents, their agents and servants, until further order of the court, from taking any further action to fix or assess any estate, inheritance or succession tax on transfers caused by the death of said Robert H. Hunt, and from taking any action to collect any such taxes "from the Estate of Robert H. Hunt, the Security-First National Bank of Los Angeles as administrator with the will annexed of the Estate of Robert H. Hunt, or your complainant"; (2) that the court determine the domicile of said Robert H. Hunt at the date of his death and then permanently enjoin those respondents who are officials of the non-domiciliary state from taking any action to collect any estate, inheritance or succession tax based upon any domicile except as so determined; (3) that each of the respondents be required to set forth and plead their several adverse claims to the property in the custody and possession of complainant, and to any of the benefits due to the complainant's obligation to pay estate, inheritance and succession taxes; (4) that the court determine the person or persons entitled to said money and property and to any benefit arising by virtue of complainant's obligation; (5) that the court determine the sum owed to any one or more of the respondents by complainant; (6) that the court adjudge that complainant is under no further obligation to any one or more of the respondents upon compliance with such decree as this court may make in this case.

The order of injunction here appealed from, after reciting the nature of the complaint, that a hearing had been had upon the California respondent's motion to dismiss the same as to them for want of jurisdiction and to vacate a temporary restraining order thereto-

fore granted, and that it appeared there was danger of irreparable injury, reads:

"Ordered that the respondents, Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California, and each of them, their agents, and servants, be, and they are hereby, enjoined until further order of this court, from taking any action to fix or assess any estate, inheritance or succession tax on transfers caused by the death of said Robert H. Hunt, and from taking any action to collect any estate, inheritance or succession tax from the Estate of Robert H. Hunt, the Security-First National Bank of Los Angeles as administrator with the will annexed of the Estate of Robert H. Hunt, or the complainant."

In their assignments of error the appellants, the officials of California, complain that the court erred (1) in ruling that the present suit comes within the scope of the Federal Interpleader Act; (2) in ruling that the Federal Interpleader Act, construed to include within its scope the present suit, is not invalid to that extent as being in violation of the Eleventh Amendment of the Constitution of the United States; (3) in ruling that the present suit is not a suit in law or in equity commenced or prosecuted against the State of California by a citizen of another state and in violation of the Eleventh Amendment; (4) in ruling that it had jurisdiction to require that there be tried before and determined by it the alleged controversy as to whether the decedent at the time of his death was domiciled for inheritance tax purposes in the State of California or in the Commonwealth of Massachusetts, notwithstanding the provisions of Article III, § 2, of the Constitution of the United States and § 233 of the Judicial Code; (5) in ruling that under the California statutes the proceeding to recover the inheritance taxes with respect to the estate of the decedent Robert H. Hunt would probably be brought in the name of the respondent Ray L. Riley, Controller of the State of California; and (6) in ruling it had jurisdiction over these California respondents in the instant case.

It is apparent from a reading of the Interpleader Statute that the

original jurisdiction conferred upon the district courts relative to bills of interpleader and bills in the nature of interpleader, and authorizing such suits to be brought by any person having the custody or possession of money or property of the value of $500 or more, or being under any obligation, written or unwritten, to the amount of $500 or more, is conditioned upon there being two or more parties, citizens of different states, claiming adversely to one another, to be entitled to money or property of the value of $500 or more in the complainant's hands, or claiming the benefits arising by virtue of any obligation in the amount of $500 or more, to which the complainant is subject; that the parties sought to be impleaded must have a claim adverse to one another and that the district court shall have before it as respondents the real parties in interest, so that, having determined the liability of the complainant to one of the impleaded claimants, it can, upon satisfaction of that liability, discharge him from further liability to both adverse claimants. And it is apparent that, unless these conditions exist, it was not the intention of Congress that the provisions of the Interpleader Act could be availed of.

It is also certain that by the complainant's bill it is alleged that the complainant has in his hands, as executor of the estate of Mr. Hunt, money or property of the amount and value of more than $500 and is also under an obligation to one or the other of the claimants in excess of that amount. But whether the bill of complaint meets other conditions of the Interpleader Act, namely, whether the respondents, the officials of the States of California and Massachusetts, are properly interpleaded, depends largely, if not wholly, upon a construction of the allegations of the complaint, disclosing whether they are sued individually and as citizens of different states, or whether they are sued as representatives and agents of the States of California and Massachusetts. If they are sued as agents and representatives of the respective states, then the states themselves have been interpleaded, (*Missouri* v. *Fiske,* 290 U. S. 18, 25, 26, 28; *In re Ayers,* 123 U. S. 443, 505, 506; *Missouri, etc., Ry. Co.* v. *Missouri Railroad,* 183 U. S. 53, 58, 59; *Ex Parte State of New York, No. 1,* 256 U. S. 490; *Sterling* v. *Constantin,* 287 U. S. 378, 393, and cases cited) and as the states are not citizens of the United States the complaint can not be main-

tained under the Interpleader Act, for under that Act only citizens of different states can be interpleaded. A state is not a citizen of the United States. *Minnesota* v. *Northern Securities Co.*, 194 U. S. 48, 63; *Postal Tel. Cable Co.* v. *Alabama*, 155 U. S. 482, 487.

It is clear, therefore, that the Interpleader Act does not contemplate the impleading of states as adverse claimants, but only citizens of different states, and, if it did, Congress would have acted in excess of its authority under the Constitution (Article XI) in attempting to confer such power upon the district courts, for original jurisdiction of suits between states is conferred upon the Supreme Court. Art. III, Sec. 2, clause 2 of the Constitution. Furthermore, the Eleventh Amendment prohibits the courts of the United States from entertaining a suit against a state by a citizen of another state.

While the judicial power of the United States extends to controversies between two or more states and to suits brought by a state against citizens of another state (Art. III, Sec. 2, clause 1), it does not extend to a suit brought against a state by citizens of another state. Eleventh Amendment. And because of its sovereignty no suit can be maintained against a state, without its consent, by one of its own citizens. *Monaco* v. *Mississippi*, 299 U. S. 313, 324.

In *Ex Parte State of New York, No. 1*, 256 U. S. 490, at 497, the court said:

"That a State may not be sued without its consent is a fundamental rule of jurisprudence having so important a bearing upon the construction of the Constitution of the United States that it has become established by repeated decisions of this court that the entire judicial power granted by the Constitution does not embrace authority to entertain a suit brought by private parties against a State without consent given: not one brought by citizens of another State, or by citizens or subjects of a foreign state, because of the Eleventh Amendment; and not even one brought by its own citizens, because of the fundamental rule of which the Amendment is but an exemplification. *Beers* v. *Arkansas*, 20 How. 527, 529; *Railroad Co.* v. *Tennessee*, 101 U. S. 337, 339; *Hans* v. *Louisiana*, 134 U. S. 1, 10–17; *North Carolina* v. *Temple*, 134 U. S. 22, 30; *Fitts* v. *McGhee*, 172 U. S. 516, 524; *Palmer* v. *Ohio*, 248 U. S. 32, 34; *Duhne* v. *New Jersey*, 251 U. S. 311, 313."

And in the same case at page 500:

"It is now established that the question [what is to be deemed a suit against a state] is to be determined not by the mere names of the titular parties but by the essential nature and effect of the proceeding, as it appears from the entire record. *Louisiana* v. *Jumel,* 107 U. S. 711, 719, 720, 723, 727–728; *Hagood* v. *Southern,* 117 U. S. 52, 67, *et seq.; In re Ayers,* 123 U. S. 443, 487–492; *Pennoyer* v. *McConnaughy,* 140 U. S. 1, 10, *et seq.; Smith* v. *Reeves,* 178 U. S. 436, 438–440; *Murray* v. *Wilson Distilling Co.,* 213 U. S. 151, 168–170; *Lankford* v. *Platte Iron Works Co.,* 235 U. S. 461, 469."

It is therefore necessary to ascertain by a construction of the allegations of the complaint whether the tax officials of the two states are sued or can be treated as being sued as individuals or only as representatives and agents of the states.

According to the allegations of the complaint Mr. Long, as tax official of Massachusetts, has determined that Mr. Hunt died domiciled in that State and has threatened and is about to assess and collect of the complainant, and the estate in its charge, inheritance and succession taxes imposed under the provisions of the Massachusetts tax statutes upon the transmission of the personal property of the estate, tangible or intangible, within the jurisdiction of the State, based upon the determination of domicile and consequent situs of the intangible property in that State; and that the respondents, officials of California, have determined that Mr. Hunt died domiciled in California and are threatening and about to assess and collect from the complainant and the estate in its charge similar taxes (based on domicile and situs of the intangible property of the estate within the jurisdiction of that State) imposed under the provisions of the California tax statutes.

It is to be noted that it is not alleged that the tax statutes under which the respondent-officials of the two States are acting are unconstitutional or that they do not authorize the assessment and collection of such taxes against the complainant or the estate in its hands, if Hunt died domiciled in either State. It therefore cannot be said that the respondent-officials of either Massachusetts or California are acting under unconstitutional and void tax laws, in which case they would be acting unlawfully and as individuals, not as officials and

agents of the respective States. And the complainant in its brief concedes this. It there states: "The bill nowhere alleges that a statute of either State is unconstitutional and no such claim is made."

It is also to be noted that neither one nor both of the respondents, as tax officials of the respective States, are charged with acting in violation of the laws of their respective States and to have determined the question of domicile arbitrarily and without substantial evidence to support such determination. See *Johnson Oil Co.* v. *Oklahoma,* 290 U. S. 158, 160, and cases there cited in the foot note; *Beidler* v. *So. Car. Tax Commission,* 282 U. S. 1, 8, 9. If there was such an allegation with respect to the determination of domicile by both sets of officials, they could be regarded as sued as individuals, for the acts which they would be charged with having done would be in violation of law, unless it could be said from a consideration of the complaint as a whole that the *relief sought* was against the States and not the officials personally. But by the bill the officials of neither State are charged with having acted, in determining the question of domicile, arbitrarily and without evidence to support their conclusions and in violation of law.

In the absence of such allegations in the complaint it must be regarded, in the respects above alluded to, as being an attempt to implead the States of California and Massachusetts as adverse claimants, which neither the Interpleader Act nor the Constitution permits. On the other hand to bring the bill within the provisions of the Interpleader Act and have the officials interpleaded regarded as citizens of different states, it was essential for the complainant to charge in the bill that the determination of domicile in each state was without adequate evidence and in violation of law, for, if only one set of officials was so charged, then the complainant would be impleading one set of officials as individuals and the other set as agents and representatives of a state, which would be impleading individual citizens against a state, would not meet the requirements of the Interpleader Act, and would be in violation of the Eleventh Amendment.

But notwithstanding what has been said, the complainant contends that Mr. Hunt could not have had his domicile at the time of his death both in California and Massachusetts and that "the threat-

ened collection of both the California and Massachusetts taxes, each based on an inconsistent claim of domicile, will deprive your complainant of property without due process of law and deny it equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States."

It is true that if the threatened taxes were later assessed and collected in each State, based upon a determination of domicile in each, the complainant and the estate in its hands would be subjected to the payment of two taxes. But if the officials of the respective States, in making their determination and assessment, were acting under constitutional laws of sovereign states and in compliance with them—not in violation of them—it is difficult to see how the complainant, or the estate in its hands, would be deprived of property without due process of law or be deprived of the equal protection of the law, in violation of the Fourteenth Amendment. And in this case, the tax laws of the respective States being conceded to be constitutional and there being no allegations that the officials of either State acted in violation of the laws of their respective States (*Johnson Oil Co.* v. *Oklahoma*, 290 U. S. 158, 160), it must be assumed that, in determining the question of domicile, each set of tax officials acted in conformity to law and had before it adequate evidence to support the conclusion reached. It is entirely conceivable that each set of officials could have found that the domicile of the decedent was in its State and that neither acted in violation of law; and if they did not act in violation of law, the taxes assessed and collected on such determinations would not contravene the Fourteenth Amendment. In reaching the conclusion they did on the evidence one or the other may have erred in judgment, but such error would not be a lack of due process or in violation of the equal protection clause. It has been settled that that Amendment does not assure immunity from judicial error or uniformity of judicial decisions. *Milwaukee Electric Ry. & Lt. Co.* v. *Wisconsin*, 252 U. S. 100, 106; *Central Land Co.* v. *Laidley*, 159 U. S. 103; *Tracy* v. *Ginzberg*, 205 U. S. 170.

In the *Wisconsin case, supra*, it was said:

"The Fourteenth Amendment does not, in guaranteeing equal protection of the laws, assure uniformity of judicial decisions . . . any

more than, in guaranteeing due process, it assures immunity from judicial error."

The question of a double tax based on inconsistent determinations of domicile was before the Supreme Court on a petition for certiorari to the New Jersey Court of Errors and Appeals in the case of *Dorrance et al.* v. *Martin,* 298 U. S. 678, where that court declined to take the case on certiorari. There the tax officials of New Jersey, the Prerogative Court of that State (115 N. J. Eq. 268; 170 Atl. 601; 116 N. J. Eq. 204; 172 Atl. 503), the Supreme Court of New Jersey (13 N. J. Misc. 168; 176 Atl. 102), and its Court of Errors and Appeals (116 N. J. Law 362; 184 Atl. 743), on the one hand, had determined that the domicile of Mr. Dorrance, at the time of his death, was in New Jersey and imposed an inheritance or succession tax on his estate, including therein the intangible property; and, on the other hand, the tax officials of Pennsylvania and the courts of that State, including its Supreme Court (309 Pa. 115), had determined that his domicile was in Pennsylvania, and, having so determined and entered judgment accordingly, the State collected a tax on the devolution of his estate, including the intangible property, on the ground that its situs was in Pennsylvania, where its courts had decided his domicile was.

In the New Jersey proceeding all the evidence introduced in the Pennsylvania proceeding, including the judgment of the Supreme Court of Pennsylvania, was introduced before the tax officials of New Jersey, who found the decedent domiciled in New Jersey. An Appeal was taken to the Prerogative Court. In the Prerogative Court the judgment of the Supreme Court of Pennsylvania was excluded from consideration on the ground that it was not conclusive evidence upon the question of domicile and, not being conclusive, was not competent evidence. The Prerogative Court having affirmed the decision of the tax officials, the case was taken to the Supreme Court of New Jersey, where the appellants complained (1) that the Prerogative Court failed to give full faith and credit to the judgment of the Supreme Court of Pennsylvania; (2) that the imposition of a tax by New Jersey, based on a domicile there, would result in the payment of two taxes on the devolution of the same estate, Pennsylvania having de-

termined the decedent's domicile to have been in Pennsylvania and having assessed and collected inheritance taxes accordingly, and that this would be in violation of the due process and the equal protection clauses of the Fourteenth Amendment; and (3) that the tax officials of New Jersey acted in violation of law in determining that Mr. Dorrance was domiciled in New Jersey. On appeal to the Court of Errors and Appeals the same questions were raised and that court sustained the judgment of the Supreme Court affirming the judgment of the Prerogative Court.

The executors then petitioned the Supreme Court of the United States for certiorari, assigning as error (1) the failure of the courts of New Jersey to give full faith and credit to the judgment of the Pennsylvania Court; (2) that as the tax judgment of the Court of Errors and Appeals affirming the judgments of the lower courts was based on a domicile of Mr. Dorrance in New Jersey, if held valid and paid (the petitioning executors having already paid a tax based on domicile in Pennsylvania), would deprive them of their property in contravention of the due process and equal protection clauses of the Fourteenth Amendment; and (3) that the state officials and courts of New Jersey acted in violation of law in determining the domicile of Mr. Dorrance to be in that state.

In its denial of certiorari, the constitutional question—that the New Jersey courts had failed to give full faith and credit to the Pennsylvania judgment—was undoubtedly regarded by the Supreme Court as unsubstantial, that question having been previously decided many times by that court. *Overby* v. *Gordon,* 177 U. S. 214, 227; *Tilt* v. *Kelsey,* 207 U. S. 43, 53, 59; *Thormann* v. *Frame,* 176 U. S. 350, 355, 356. It is also certain that the evidence presented in the New Jersey courts was adequate to sustain their finding of domicile in New Jersey, and consequently that the tax officials and courts of New Jersey did not act in violation of law for want of adequate evidence to support the finding of domicile there. And in denying certiorari the Supreme Court must also have concluded that the mere fact that the respective tax officials and courts of the two States had determined that the domicile of Dorrance, at the time of his death, was in their respective States, and that such determinations, assess-

ments, and collection of the two taxes, based on inconsistent determinations, was not in violation of the due process and equal protection clauses of the Fourteenth Amendment. It is inconceivable that they would have denied certiorari if they had regarded the mere determination of inconsistent domiciles in the two States a violation of the Fourteenth Amendment. The evidence introduced and considered in the proceedings in both States was conflicting and the error, if any, was a judicial one.

We recognize that the mere denial of a petition for certiorari by the Supreme Court cannot be regarded by us as determinative of the questions therein raised; but in view of the action of the Supreme Court in that case and what has been above said bearing upon the questions there involved, we think that the allegations in the complaint of mere inconsistent determinations of domicile resulting in two taxes by sovereign states are not allegations of a violation of the Fourteenth Amendment; and there being no claim that the laws under which the tax officials acted were unconstitutional and no allegations in the bill that, in determining the question of domicile, they acted without adequate proof and in violation of law, the bill does not state a cause of action against the officials as individuals, but as representatives and agents of their respective states and can not be maintained.

If the bill could be regarded as brought against the tax officials as individuals and not as representatives and agents of their states on the ground that both sets of officials acted arbitrarily and without adequate evidence in determining domicile, we are further of the opinion that the officials of California, as individuals, cannot be regarded as having adverse claims or demands against the officials of Massachusetts, as individuals, or vice versa; and that the claimants here sought to be impleaded are the States of California and Massachusetts for taxes due them, not the officials personally.

Then again, the Interpleader Act contemplates that the District Court, having determined a controversy between the adverse claimants and in favor of one of them, may order the complainant to pay to the successful party the amount of his claim and, payment having been made, enter a decree of acquittance discharging the complainant from the claim of the defeated party, as well as that of the successful

one. If in this case the District Court should find that Mr. Hunt, at the time of his death, was domiciled in Massachusetts and not in California, and if the officials of California, as individuals and not as representatives and agents of California, were the only parties before the court, it would have no authority or jurisdiction over the State of California entitling it to discharge its tax claim against the complainant as executor of Mr. Hunt's estate. The interest of the State in the tax is of such a nature that a final decree cannot be made without affecting that interest. And inasmuch as the Interpleader Act (Sec. 26 (d)) and the complaint contemplate a discharge of the complainant from liability to both impleaded parties, which cannot be done unless the real claimants, the States, are before the court as such or by their duly authorized agents and representatives, this proceeding, if the impleaded respondents are both sued as individuals, is not authorized by that Act, and the District Court would be without jurisdiction. *Cunningham* v. *Macon & Brunswick Co.*, 109 U. S. 446, 451, 456, 457; *Missouri* v. *Fiske*, 290 U. S. 18, at page 28.

The order of the District Court granting a temporary injunction is vacated and the case is remanded to that court with directions to dismiss the bill of complaint for want of jurisdiction.

MORTON, J. (dissenting). I agree that the Interpleader Act as amended is broad enough to cover the present case of conflicting claims to an estate tax which can be justly collected by only one of the claimants. But I do not think, as my brethren hold, "that the claimants here sought to be impleaded are the *States* of California and Massachusetts for taxes due them, not the officials 'personally'", and that the act is on that ground unavailable. While the bill might be more clearly and definitely phrased, I understand it to allege that the tax officials of both California and Massachusetts are claiming an estate tax on the estate of decedent Hunt; that only one such tax can legally be collected, and that plaintiffs are ready to pay it; and that the claim made by each State official is wholly unwarranted in law, is without legal justification under any statute, and violates the XIV amendment. It is characteristic of bills in the nature of interpleader under this statute, that the plaintiff concedes indebtedness to one or

the other of the claimants, but denies indebtedness or obligation to each one separately.

I take it as settled by *First National Bank* v. *Maine* (284 U. S. 312) that no state may impose an estate tax on the estate of a decedent unless he was domiciled within its borders. To do so is unconstitutional. Plainly, if Hunt was domiciled in Massachusetts, then California tax officials are acting not only illegally, but unconstitutionally, in undertaking to tax his estate,—and vice versa. I also take it to be settled that a state official, who takes, or threatens to take, action which is unconstitutional or without any warrant in law, may be enjoined. He is not the State for the purpose of such illegal action. *Sterling* v. *Constantin,* 287 U. S. 378, 393. In *Greene et al., Board of Valuation and Assessment of the State of Kentucky* v. *Louisville, etc., Railroad Company,* 244 U. S. 499, the plaintiffs were, as the title of the case indicates, the Taxation Board of the State of Kentucky, but they were held liable to suit, and it was said that the liability to suit of such officials was not confined to cases where they were attempting to enforce an unconstitutional statute. "A valid law may be wrongfully administered by officers of the State, and so as to make such administration an illegal burden and exaction upon the individual." *Reagan* v. *Farmers' Loan & Trust Co.,* 154 U. S. 362, 390. See too *Terrace* v. *Thompson,* 263 U. S. 197.

A state official who is acting illegally and without jurisdiction, as both these tax officials are alleged to be acting and one of them concededly is acting, cannot successfully maintain that the Eleventh Amendment bars any suit against him. As to one or the other of the claimants, the plaintiff's allegation that he is acting unconstitutionally and in violation of law, is bound to fail, and as to that one the suit will then be dismissed because he will be, legally speaking, the State, of which he is an official acting in the proper performance of his legal duty; as to the other, it will appear that he is acting unconstitutionally and illegally. As I have said such a result is inherent in suits in the nature of interpleader, that one claimant is adjudged to have a good claim against the plaintiff, and the other not. Jurisdiction depends on the allegations of the bill against each claimant.

It has been said on the highest authority that, "Taxation is an intensely practical matter and laws in respect of it should be construed

and applied with a view of avoiding, so far as possible, unjust and oppressive consequences." McReynolds, J., *Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204, 212. Considering the recognized defect in our system of taxation which this statute is designed to cure, the example of shocking injustice to which it has led in the *Dorrance case* (116 N. J. Law 362; 309 Pa. 115; 298 U. S. 678), which is a reproach to our law, and the constant threat of similar injustice in all cases in which there is a dispute as to domicile, I think this statute should receive a liberal interpretation, and that on points which are at best rather technical and procedural in character, doubt should be resolved in favor of jurisdiction under this statute, which appears to be the only practicable method of remedying the evil. (See 45 Yale Law Journal 1173, discussion of this statute by Prof. Chaffee, and 49 Harvard Law Review 1378, a note of this statute in tax cases.) One of the claimants, Mr. Long, Tax Commissioner of Massachusetts, regards the considerations just mentioned as so weighty that he makes no objection on jurisdictional grounds and approves the practice of submitting such cases of disputed domicile to the impartial determination of the federal courts. Various technical objections made by the appellant seem to me to have been fully and correctly dealt with by Judge Brewster in the District Court, whose opinion it is unnecessary to restate. I think the judgment appealed from should be affirmed.

On the same day, to wit, March 15, 1937, the following Final Decree was entered:

FINAL DECREE.

March 15, 1937.

This cause came on to be heard on January 6 and 7, 1937, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now, to wit, March 15, 1937, here ordered, adjudged and decreed as follows: The order of the District Court granting a temporary injunction is vacated and the case is remanded to that court with directions to dismiss the bill of complaint for want of jurisdiction.

By the Court,

ARTHUR I. CHARRON, *Clerk.*

Thereafter, to wit on April 2, 1937, the following Motion was filed:

MOTION FOR RESTORATION AS PARTY RESPONDENT.

[Filed April 2, 1937.]

Now comes Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts and says that he was a party respondent in this case in the District Court and is vitally interested in its outcome; that he declined to join in the appeal from the April 28, 1936, order of the District Court, being satisfied to submit to the jurisdiction of that court; that this court on March 15, 1937, decided that the District Court had no jurisdiction of the case; that he is informed and believes that a petition for certiorari upon this decision will be filed in the United States Supreme Court by the Worcester County Trust Company, Executor, complainant; that he desires to participate of right in any such proceedings in the United States Supreme Court.

Wherefore, he moves that he be restored as a party respondent in this case and be made a party of record in this court.

HENRY F. LONG, *Commissioner,*
by PAUL A. DEVER,
Attorney General of Massachusetts.

Worcester County Trust Company, Executor, has no objection to the allowance of this motion.

BRADLEY B. GILMAN,
its Attorney.

Thereafter, to wit, on April 5, 1937, the following Order of Court was entered:

ORDER OF COURT.

April 5, 1937.

The application of Henry F. Long, Commissioner of Corporations and Taxation, filed April 2, 1937, in this case, is denied, without prejudice to renew his application in the Supreme Court of the United States if such court takes the case on certiorari.

By the Court,

ARTHUR I. CHARRON, *Clerk.*

Thereafter, to wit, on April 9, 1937, mandate was stayed until further order of court.

CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the printed pages numbered 1 to 61, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including April 14, 1937, in the cause in said court numbered and entitled,

No. 3163.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, ET AL., RESPONDENTS, APPELLANTS,

v.

WORCESTER COUNTY TRUST COMPANY, EXECUTOR, PETITIONER, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this fourteenth day of April, A. D. 1937.

[SEAL] ARTHUR I. CHARRON, *Clerk.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 24, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.